

California Regional Water Quality Control Board
Santa Ana Region

August 22, 2003

ITEM: 18

SUBJECT: Administrative Civil Liability Complaint No. R8-2003-0090 for
Zambelli Fireworks Manufacturing Company

Introduction

The matter before the Board is to consider adoption of Order No. R8-2003-0098, which affirms Administrative Civil Liability Complaint No. R8-2003-0090. The Complaint was issued by the Executive Officer on July 28, 2003 to Zambelli Fireworks Manufacturing Company, also known as Zambelli Fireworks Internationale (hereinafter Zambelli). The complaint was issued because of Zambelli's failure to comply with the Executive Officer's December 16, 2002 directive to submit a work plan to conduct an investigation of perchlorate in the soil and groundwater in the vicinity of Zambelli's former storage bunker in North Rialto. Zambelli is alleged to have violated subdivision (a) of Section 13268 of the California Water Code, which states "Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267...is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b)."

Background

During World War II, the U.S. Government selected approximately 2,800 acres in the relatively remote area of Northern Rialto for use as a military depot for the storage of ammunition. The Northern Rialto area is situated along the foothills of the Eastern San Gabriel Mountains, to the west of Lytle Creek. The facility was known as the Rialto Ammunition Storage Point. Concrete-walled storage bunkers (also called "igloos"), railroad tracks and earthen berms were constructed for use in housing the ammunition at various locations on the property. The base was used by the Department of Defense for over 10 years. Following World War II, the Rialto Ammunition Storage Point was vacated by the military. The bunkers and berms were left in place.

The bunkers were subsequently used by government contractors and local businesses for the storage of explosives, chemicals and fireworks. In 1994, all but one of the bunkers was demolished. From at least 1982 to 1991, Zambelli utilized the bunker known as A-1 for the storage of fireworks that contained perchlorate salts.

Perchlorate, in the form of salts such as ammonium perchlorate and potassium perchlorate, is used as a component of solid rocket propellant, fireworks, ordnance and other explosives. Perchlorate salts are highly soluble and dissociate in water to form perchlorate ions. Thus, discharges of perchlorate salts can ultimately result in perchlorate contamination of the groundwater. Discharges of perchlorate are known to have severely impacted groundwater at a number of explosive and propellant manufacturing, testing and storage facilities throughout California. Perchlorate contamination of groundwater in the Rialto-Colton-Fontana area has resulted in either the closure or restricted use of 20 municipal water supply wells belonging to four water agencies. Groundwater flow in the Colton and Rialto Subbasins is generally toward the southeast, in alignment with several significant structural and geologic features. The water supply wells in the Rialto and Colton Groundwater Subbasins that are affected by perchlorate are located downgradient of the former Rialto Ammunition Storage Point and its ammunition storage bunkers.

In June 2002, the Executive Officer issued a Cleanup and Abatement Order to two defense contractors that had previously utilized perchlorate salts during their manufacturing activities on a 160-acre parcel of the former Rialto Ammunition Storage Point in North Rialto. The two suspected perchlorate dischargers that were named in the Cleanup and Abatement Order were the Goodrich Corporation (formerly B.F. Goodrich) and the Kwikset Corporation (formerly West Coast Loading Corporation). On September 13, 2002, the Regional Board conducted a hearing regarding the Cleanup and Abatement Order for Goodrich and Kwikset.

At the September 13, 2002 hearing, the Board rescinded the Cleanup and Abatement Order for the two parties, and directed staff to issue Investigation Orders pursuant to California Water Code Section 13267 to all suspected perchlorate dischargers in North Rialto. The Board further stated its intent to issue further enforcement in the form of administrative civil liability penalties of up to \$1,000 per day, if the suspected dischargers were to violate the Investigation Orders.

In response to this directive by the Board, the Executive Officer has issued Investigation Orders to Goodrich, Emhart, the U.S. Army Corps of Engineers (U.S. Department of Defense) and 16 other suspected perchlorate dischargers and property owners in North Rialto, including Zambelli.

Findings

Section 13267(b) of the California Water Code authorizes the Board to require entities who are suspected of having discharged waste to submit technical reports. Perchlorate has been detected in municipal water supply wells downgradient of former Bunker A-1 used by Zambelli. Zambelli is suspected of

having discharged perchlorate waste that has adversely affected water quality. Accordingly, the Executive Officer issued Zambelli an Investigation Order dated December 16, 2002, pursuant to Section 13267 (b). Based on the evidence referenced in the Investigation Order, Zambelli was ordered to submit a work plan by January 31, 2003, for conducting a soil and groundwater investigation of perchlorate in the vicinity of the former storage bunker.

Board staff met with the attorney for Zambelli on January 22, 2003 to discuss Zambelli's request for a one-month extension of the deadline for submittal of the work plan. The attorney stated that Zambelli had experienced difficulties in locating and reviewing historical records pertaining to the company's use of Bunker A-1. The extension was not granted. However, staff considered the attorney's explanation and the written request for extension and determined not to take enforcement action for the delinquent report at that time.

Board staff had numerous communications with Zambelli's attorney in an effort to obtain the work plan, and a work plan was eventually submitted on June 16, 2003 (approximately five months late). The work plan proposed a review of records, a site reconnaissance at the location of the former storage bunker, interviews with knowledgeable individuals, and submittal of a summary report, but failed to include a soil and groundwater investigation.

Staff determined that the work plan that was submitted was delinquent and inadequate, and did not comply with the requirements of the December 16, 2002 Investigation Order. Failure to submit an adequate work plan by January 31, 2003, pursuant to the December 16, 2002 Investigation Order, is a violation of California Water Code Section 13268(a). California Water Code Section 13268(b) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed one thousand dollars (\$1,000) for each day that a violation of Section 13268(a) occurs. Pursuant to California Water Code Section 13268, the total maximum assessment for which Zambelli is civilly liable is \$178,000, based on \$1,000 per day for 178 days of violation from January 31, 2003, through the date of the Complaint, July 28, 2003.

Board staff costs for preparing the written documentation for this case, researching the bunker site history, responding to information requests from the public regarding this site, and seeking the required work plan through communications with Zambelli's attorney were approximately \$7,650 (85 hours at \$90/hour). These costs were considered in assessing the proposed liability.

Discussion

Section 13327 of the California Water Code specifies factors that the Board shall consider in establishing the amount of civil liability. These factors are addressed below:

1. Nature, circumstances, extent, and gravity of the violation

Zambelli stored fireworks containing perchlorate salts in Bunker A-1 in North Rialto from at least 1982 to 1991. The Executive Officer issued an Investigation Order to Zambelli pursuant to California Water Code Section 13267 on December 16, 2002. Zambelli did not file a petition for review of the Investigation Order and, instead, submitted an inadequate work plan almost five months beyond the specified compliance deadline. The work plan did not include a soil and groundwater investigation. Zambelli knowingly and intentionally violated California Water Code Section 13268(a) by failing to submit the technical information required by the Investigation Order.

Perchlorate pollution of groundwater in the Rialto and Colton Groundwater Subbasins has impacted numerous municipal water supply wells and created an extremely serious water quality and water supply problem. The California Water Code allows the Regional Board to require anyone who is suspected of discharging waste to furnish technical reports that the Regional Board requires. Parties that are suspected of discharging perchlorate in North Rialto that fail to submit work plans to conduct soil and groundwater investigations impede the Regional Board's ability to confirm the sources of perchlorate pollution in this area and, consequently, delays the ability of the Regional Board to require identified dischargers to cleanup and abate the serious impacts to the beneficial uses of groundwater that exist in this area.

2. Whether the discharge is subject to cleanup or abatement

This factor is not applicable because an investigation to determine if a discharge occurred has not yet been conducted.

3. Degree of toxicity of the discharge

This factor is not applicable because an investigation to determine if a discharge occurred has not yet been conducted.

4. Discharger's ability to pay

Board staff has no information to indicate that Zambelli would be unable to pay the proposed assessment.

5. Effect of the penalty on the discharger's ability to continue in business

Board staff has no information to indicate that the penalty would have an effect on Zambelli's ability to remain in business.

6. Voluntary cleanup efforts undertaken by the discharger

This factor is not applicable because an investigation to determine if a discharge occurred has not yet been conducted.

7. Prior history of violations

Board staff has no information regarding any prior history of violations of the California Water Code by Zambelli.

8. Degree of culpability

The discharger is completely culpable for failure to submit an appropriate work plan pursuant to the Investigation Order. Board staff has no information to indicate that there was any reason why Zambelli could not have submitted the required work plan.

9. Economic benefit or savings, if any, resulting from the violation

Zambelli has failed to submit a work plan to conduct the required site investigation activities. A deficient and delinquent work plan was submitted by Zambelli. The cost of preparation of the deficient work plan would have been lower than the cost for preparation of a detailed, more extensive technical work plan necessary to perform the site investigation activities, but probably is not significant. However, the economic benefit resulting from not performing a soil and groundwater investigation is significant, and would vary depending on the activities included in an approved work plan. The cost of conducting a soil and groundwater investigation could range from several thousand dollars to well over one hundred thousand dollars.

After consideration of the above factors, the Executive Officer issued Administrative Civil Liability Complaint No. R8-2003-0090 to Zambelli in the amount of \$35,000.

Recommendation

Board staff recommends that the Board affirm Complaint No. R8-2003-0090 by adopting Order No. R8-2003-0098.

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION**

In the matter of:)	Order No. R8-2003-0098
)	
Zambelli Fireworks Manufacturing)	for
Company)	Administrative Civil Liability
27 East Maitland Lane)	
New Castle, PA 61605)	
)	
<u>Attn: George Zambelli, Sr.</u>)	

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), held a hearing on August 22, 2003 to receive testimony and take evidence on the allegations contained in Complaint No. R8-2003-0090, dated July 28, 2003, and on the recommendation for the imposition of an assessment of civil liability pursuant to Water Code Section 13268 in the amount of \$35,000. The Board finds as follows:

1. Perchlorate has been detected in municipal water supply wells in the Rialto and Colton Groundwater Subbasins. These water supply wells are located downgradient of the former storage bunker that was used by the Zambelli Fireworks Manufacturing Company, also known as Zambelli Fireworks Internationale (hereinafter Zambelli) from 1982 (and possibly earlier) until 1991, located at 2170 West Stonehurst, City of Rialto, San Bernardino County, California. Zambelli used and stored products containing perchlorate salts in the former bunker.
2. Zambelli is suspected of having discharged perchlorate waste that has adversely affected water quality. Accordingly, the Executive Officer issued Zambelli an Investigation Order dated December 16, 2002 pursuant to subdivision (b) of California Water Code Section 13267.
3. Based on the evidence referenced in the December 16, 2002 Investigation Order, Zambelli was ordered to submit a work plan by January 31, 2003, for conducting a soil and groundwater investigation of perchlorate in the vicinity of the former storage bunker. The December 16, 2002 Investigation Order also informed Zambelli that failure to submit the required information by the specified deadline would subject Zambelli to administrative civil liability in the amount of up to \$1,000 per day pursuant to Section 13268 (a) and (b) of the California Water Code.

4. At the request of Mr. Michael F. Buck, attorney for Zambelli, Board staff met with Mr. Buck on January 22, 2003. Mr. Buck stated that Zambelli had experienced difficulties in locating and reviewing historical records pertaining to the company's use of the Rialto storage bunker. On January 24, 2003, Board staff received a written request from Mr. Buck for a one-month extension of the compliance deadline for Zambelli's submittal of a work plan. The extension was not granted. However, staff considered Mr. Buck's explanation and the written request for extension and determined not to take enforcement action for the delinquent report at that time.
5. Between January 24 and July 8, 2003, Board staff had numerous communications with Mr. Buck by e-mail and telephone regarding submittal of the required work plan. A work plan was submitted on June 16, 2003 (approximately five months late). The work plan, prepared by Erler & Kalinowski, Inc., (EKI), proposed a review of records, a site reconnaissance at the location of the former storage bunker, interviews with knowledgeable individuals, and submittal of a summary report, but failed to include a soil and groundwater investigation.
6. Zambelli failed to submit a work plan by January 31, 2003, and the work plan that was submitted on June 16, 2003 failed to include an investigation of soil and groundwater in the vicinity of the former bunker. Therefore, the work plan that was submitted was delinquent and inadequate, and does not comply with the requirements of the December 16, 2002 Investigation Order. Failure to submit an adequate work plan by January 31, 2003, pursuant to the December 16, 2002 Investigation Order, is a violation of California Water Code Section 13268(a).
7. Section 13268(b) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed one thousand dollars (\$1,000) for each day that a violation of Section 13268(a) occurs.
8. Pursuant to Section 13268, the total maximum assessment for which Zambelli is civilly liable is \$178,000, based on \$1,000 per day for 178 days of violation from January 31, 2003, through the date of the Complaint, July 28, 2003.
9. Board staff costs for preparing the case summary, researching the bunker site history, responding to information requests from the public regarding this site, and seeking the required work plan through communications with Zambelli's attorney were approximately \$7,650 (85 hours at \$90/hour). These factors were considered in assessing the penalty proposed in Complaint No. R8-2003-0090.
10. Section 13327 specifies factors that the Board shall consider in establishing the amount of civil liability. These factors include: the nature, circumstances, extent, and gravity of the violation, whether the discharge is subject to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the discharger, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. The factors are

analyzed in the Staff Report for the Regional Board's Hearing of Complaint No. R8-2003-0090, Item No. 18, which is incorporated herein by reference.

11. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 2100 et seq.) in accordance with Section 15321, Chapter 3, Title 14, California Code of Regulations.
12. The Executive Officer is authorized to refer this matter to the Attorney General for enforcement.

(a) **IT IS HEREBY ORDERED** that pursuant to California Water Code Section 13268, civil liability is imposed on Zambelli in the amount of \$35,000 for the violations cited.

Pursuant to Water Code Section 13320, you may petition the State Water Resources Control Board for review of this Order. If you choose to do so, you must submit the petition to the State Board within 30 days of the Regional Board's adoption of this Order.

I, Gerard Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on August 22, 2003.

Gerard J. Thibeault
Executive Officer

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION**

In the matter of:

**Zambelli Fireworks Manufacturing
Company
27 East Maitland Lane
New Castle, PA 61605**

Attn: George Zambelli, Sr.

**Complaint No. R8-2003-0090
for
Administrative Civil Liability**

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Zambelli Fireworks Manufacturing Company, also known as Zambelli Fireworks Internationale (hereinafter Zambelli) and formerly operating in Rialto, California, is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), may impose liability under Section 13268 of the California Water Code.
2. A hearing in this matter will be scheduled for the Board's regular meeting on August 22, 2003, at the Orange County Water District, 10500 Ellis Avenue, Fountain Valley. Zambelli or its representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Board. An agenda for the meeting will be mailed to you not less than 10 days prior to the hearing date.
3. At the hearing, the Board will consider whether to affirm, reject or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. Zambelli is alleged to have violated subdivision (a) of Section 13268 of the California Water Code, which states "Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267...is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b)"
5. This Complaint is based on the following facts:
 - a) Perchlorate has been detected in municipal water supply wells in the Rialto and Colton Groundwater Subbasins. These water supply wells are located downgradient of the former storage bunker that was used by Zambelli from 1982 (and possibly earlier) until 1991, located at 2170 West Stonehurst, City of

Rialto, San Bernardino County, California. Zambelli used and stored products containing perchlorate salts in the former bunker.

- b) Zambelli is suspected of having discharged perchlorate waste that has adversely affected water quality. Accordingly, the Executive Officer issued Zambelli an Investigation Order dated December 16, 2002, pursuant to subdivision (b) of California Water Code Section 13267.
 - c) Based on the evidence referenced in the December 16, 2002 Investigation Order, Zambelli was ordered to submit a work plan by January 31, 2003, for conducting a soil and groundwater investigation of perchlorate in the vicinity of the former storage bunker. The December 16, 2002 Investigation Order also informed Zambelli that failure to submit the required information by the specified deadline would subject Zambelli to administrative civil liability in the amount of up to \$1,000 per day pursuant to Section 13268(a) and (b) of the California Water Code.
 - d) At the request of Mr. Michael F. Buck, attorney for Zambelli, Board staff met with Mr. Buck on January 22, 2003. Mr. Buck stated that Zambelli had experienced difficulties in locating and reviewing historical records pertaining to the company's use of the Rialto storage bunker. On January 24, 2003, Board staff received a written request from Mr. Buck for a one-month extension of the compliance deadline for Zambelli's submittal of a work plan. The extension was not granted. However, staff considered Mr. Buck's explanation and the written request for extension and determined not to take enforcement action for the delinquent report at that time.
 - e) Between January 24 and July 8, 2003, Board staff had numerous communications with Mr. Buck by e-mail and telephone regarding submittal of the required work plan. A work plan was submitted on June 16, 2003 (approximately five months late). The work plan, prepared by Erler & Kalinowski, Inc., (EKI), proposed a review of records, a site reconnaissance at the location of the former storage bunker, interviews with knowledgeable individuals, and submittal of a summary report, but failed to include a soil and groundwater investigation.
6. Zambelli failed to submit a work plan by January 31, 2003, and the work plan that was submitted on June 16, 2003 failed to include an investigation of soil and groundwater in the vicinity of the former bunker. Therefore, the work plan that was submitted was delinquent and inadequate, and does not comply with the requirements of the December 16, 2002 Investigation Order. Failure to submit an adequate work plan by January 31, 2003, pursuant to the December 16, 2002 Investigation Order, is a violation of California Water Code Section 13268(a).


7. Section 13268(b) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed one thousand dollars (\$1,000) for each day that a violation of Section 13268(a) occurs.
8. Pursuant to Section 13268, the total maximum assessment for which Zambelli is civilly liable is \$178,000, based on \$1,000 per day for 178 days of violation from January 31, 2003, through the date of this Complaint, July 28, 2003.
9. Board staff costs for preparing the written documentation for this case, researching the bunker site history, responding to information requests from the public regarding this site, and seeking the required work plan through communications with Zambelli's attorney were approximately \$7,650 (85 hours at \$90/hour). These costs were considered in assessing the liability proposed in Paragraph 11, below.
10. Section 13327 specifies factors that the Board shall consider in establishing the amount of civil liability. These factors include: the nature, circumstances, extent, and gravity of the violation, whether the discharge is subject to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the discharger, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require.
11. After consideration of the above factors, the Executive Officer proposes that civil liability be imposed on Zambelli in the amount of \$35,000. An invoice for this amount is enclosed.

WAIVER OF HEARING

Zambelli may waive its right to a hearing. If Zambelli chooses to do so, please sign the attached waiver form and return it, together with a check or money order for \$35,000, and the bottom portion of the invoice, to the State Water Resources Control Board in the enclosed preprinted envelope.

If you have any questions, please contact Ann Sturdivant at (909) 782-4904, Kurt Berchtold at (909) 782-3286, or contact the Regional Board's legal counsel, Jorge Leon, at (916) 341-5180.

7/28/03
Date


Gerard J. Thibeault
Executive Officer

In the matter of:)
)
Zambelli Fireworks Manufacturing Company)
27 East Maitland Lane)
New Castle, PA 61605)
)
Attn: George Zambelli, Sr.)

Complaint No. R8-2003-0090
for
Administrative Civil Liability

WAIVER OF HEARING

I agree to waive Zambelli Fireworks Manufacturing Company's right to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2003-0090. I have enclosed a check, made payable to the State Water Resources Control Board, in the amount of \$35,000. I understand that I am giving up Zambelli Fireworks Manufacturing Company's right to be heard and to argue against allegations made by the Executive Officer in this complaint, and against the imposition of, and the amount of, the liability proposed.

Date

for Zambelli Fireworks Manufacturing Company



California Regional Water Quality Control Board

Santa Ana Region



Winston H. Hickox
Secretary for
Environmental
Protection

Internet Address: <http://www.swrcb.ca.gov/rwqcb8>
3737 Main Street, Suite 500, Riverside, California 92501-3348
Phone (909) 782-4130 - FAX (909) 781-6288

Gray Davis
Governor

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website at www.swrcb.ca.gov/rwqcb8.

July 28, 2003

Mr. Michael L.F. Buck
McDonough, Holland & Allen
555 Capitol Mall, Suite 950
Sacramento, CA 95814

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R8-2003-0090

Dear Mr. Buck:

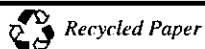
Enclosed is Complaint No. R8-2003-0090 assessing administrative civil liability against the Zambelli Fireworks Manufacturing Company (a.k.a. Zambelli Fireworks Internationale, hereinafter Zambelli) for failing to submit the required work plan for an investigation of soil and groundwater at the site of their former storage bunker in Rialto, California. Unless Zambelli waives its right to a hearing, a public hearing on this matter will be held at the Santa Ana Regional Water Quality Control Board's meeting on August 22, 2003. This Board meeting will be held at the offices of the Orange County Water District, 10500 Ellis Avenue, Fountain Valley, California. An agenda and a staff report will be provided to you at least 10 days prior to the meeting.

If Zambelli chooses to waive its right to a hearing, please complete the enclosed waiver form and submit it to this office prior to the hearing, with a check for the proposed amount of civil liability (\$35,000). The check should be made payable to the State Water Resources Control Board.

If Zambelli does not wish to waive its right to a hearing, you should contact this office to schedule a pre-hearing meeting. At that time, you may submit information that may not have been previously available to staff regarding this matter. The information should address the following items:

1. Nature, circumstance, extent and gravity of the violation;
2. Susceptibility of discharge to cleanup or abatement;
3. Your ability to pay the proposed assessment;
4. Any prior history of violation;
5. Your degree of culpability;
6. Economic benefit, or savings, resulting from the discharge;
7. Such matters as justice may require.

California Environmental Protection Agency



July 28, 2003

If you have any questions, or wish to schedule a pre-hearing meeting, please call Kurt Berchtold, Assistant Executive Officer, at (909) 782-3298, or Ann Sturdivant, Chief of our SLIC/DoD Section, at (909) 782-4904.

Sincerely,



Gerard J. Thibeault
Executive Officer

Enclosures: 1. Administrative Civil Liability Complaint No. R8-2003-0090
2. Waiver of Hearing
3. Mailing List

cc w/enclosures:

Regional Board
Jorge Leon, SWRCB, OCC
George Zambelli, Sr., New Castle, PA

cc w/o enclosures:

Inland Empire Perchlorate Regulatory Task Force (mailing list enclosed)

AES/data/SLIC/2001-03 rialto perchlorate/13267/Zambelli ACLC transmittal

